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In the Supreme Court of the United States

BRIDGEPORT ROMAN CATHOLIC DIOCESAN CORPORATION, CARDINAL EDWARD M. EGAN, REVEREND MONSIGNOR THOMAS DRISCOLL AS EXECUTOR OF THE ESTATE OF BISHOP WALTER CURTIS, REVEREND MONSIGNOR ANDREW T. CUSACK, AND REVEREND MONSIGNOR LAURENCE BRONKIEWICZ,

Petitioners,

v.

THE NEW YORK TIMES COMPANY, THE HARTFORD COURANT COMPANY, GLOBE NEWSPAPER COMPANY, INC., THE WASHINGTON POST COMPANY, AND GEORGE L. ROSADO,

Respondents.

On Petition for a Writ of Certiorari to The Supreme Court of Connecticut

BRIEF *AMICUS CURIAE* OF THE BECKET FUND FOR RELIGIOUS LIBERTY IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICUS*

The Becket Fund for Religious Liberty is a nonprofit, nonpartisan law firm dedicated to protecting the free expression of all religious traditions.[1] The Becket Fund has represented agnostics, Buddhists, Christians, Hindus, Jews, Muslims, Santeros, Sikhs, and Zoroastrians, among others, in lawsuits across the country and around the world. The Becket Fund has also represented virtually every kind of religious polity, including congregational, hierarchical, and trustee-led churches.[2]

The Becket Fund has an interest in this case because it regularly represents organizations asserting a constitutional right of church autonomy. See, *e.g.*, *Curay-Cramer* v. *Ursuline Acad. of Wilmington, Delaware, Inc.*, 450 F.3d 130, 141 (3d Cir. 2006); *Hindu Temple Soc'y of N. Am.* v. *Supreme Court of New York*, 335 F. Supp. 2d 369, 374 (E.D.N.Y. 2004). Such organizations frequently face claims that they have somehow waived their church autonomy rights. The Becket Fund is therefore concerned that the Connecticut Supreme Court's "inadvertent waiver" standard, if adopted elsewhere, will weaken church autonomy and undermine religious liberty nationwide.

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[1] Pursuant to Rule 37.2, counsels of record for the parties received timely notice of the intent to file this brief and have consented to its filing. As required by Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no person other than the *amicus*, its members, and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] This brief uses the term "church" broadly to refer to religious organizations of all different faith traditions.

SUMMARY OF ARGUMENT

This brief makes two simple points: (I) The question of whether a church has waived its autonomy rights is recurring and difficult; and (II) The waiver question has serious practical consequences.

I. Far from being limited to the facts of this case, the waiver question arises in a wide variety of church autonomy cases and at many stages of litigation. Often litigants claim that a church has waived its autonomy defense by failing to raise it properly—much like the Connecticut Supreme Court concluded here. Part I.A., *infra*. In other cases, a claim of waiver is based on the notion that the church has bargained away its autonomy rights contractually, or has waived those rights by pledging to refrain from certain types of conduct. Part I.B., *infra*. Still other cases consider whether a church has waived its autonomy rights by receiving government funds. Part I.C., *infra*.

In all these cases, courts must confront the same question presented here: When does a church waive its autonomy rights? This is an important, recurring, and "open question." *Hollins* v. *Methodist Healthcare*, 474 F.3d 223, 227 (6th Cir. 2007) (McKeague, J., concurring). This Court should take the opportunity to clarify that the right of church autonomy, like other constitutional rights, can be waived only if the waiver is "voluntarily, intelligently, and knowingly" made. *Fuentes* v. *Shevin*, 407 U.S. 67, 94-95 (1972).

II. The waiver question is also noteworthy because of its sweeping practical consequences. *First*, the Connecticut Supreme Court's "inadvertent waiver" rule undermines religious liberty. If a church

accidentally waives its rights, the government can force the church to expose its most sensitive, internal deliberations to the public—without any balancing of the church's rights or the government's interests. Similarly, in the event of inadvertent waiver, secular courts can second-guess the most intimate decisions of religious bodies, such as who can be a minister or how a church should be structured. Such intrusion into a church's internal affairs seriously undermines religious liberty.

Second, Connecticut's inadvertent waiver rule threatens to entangle church and state. If, for example, a church inadvertently waives autonomy in an employment discrimination suit, courts will be obliged to decide whether the minister was fired over a genuine theological dispute, or whether the theological dispute was merely pretext for discrimination. Under an inadvertent waiver rule, there is virtually no limit to the religious questions courts can be compelled to resolve.

Third, the inadvertent waiver rule provokes needless church–state litigation. Here, by construing the Diocese's cooperation in the underlying lawsuit as a waiver, the Connecticut Supreme Court penalizes the church's attempt to settle. In other cases, claims that would plainly be barred by a church autonomy defense could succeed if the church inadvertently waives its rights. The inadvertent waiver rule thus gives life to otherwise meritless lawsuits.

ARGUMENT

I. The question of whether a church has waived its autonomy rights is recurring and difficult.

The first question presented—whether and how a church can waive its autonomy rights[3]—is a question of exceptional importance. The waiver question is not limited to the narrow facts of this case (namely, public access to church documents produced under seal). Rather, it arises in a wide variety of contexts and at many stages of litigation. The Court should grant certiorari to address this difficult, recurring issue.

A. One of the most common waiver arguments in church autonomy cases is that a church has waived its autonomy defense by failing to raise it at the proper time or in the proper manner. Here, for example, the Connecticut Supreme Court concluded that the Diocese should have raised church autonomy earlier and more clearly—*e.g.*, by refusing to produce documents and risking contempt, by asserting church autonomy objections when each document was produced, or by moving to clarify the basis of the trial court's protective orders. Pet.66a-67a.

Other cases frequently involve the same argument. In *Petruska* v. *Gannon University*, for example,

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[3] This brief uses "church autonomy rights" broadly to refer to freedom from state interference in a church's internal affairs, including church structure and governance, *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94 (1952), selection of ministers (the "ministerial exception"), *Petruska* v. *Gannon University*, 462 F.3d 294 (3d Cir. 2006), and resolution of intrachurch disputes (the "neutral principles" approach), *Jones* v. *Wolf*, 443 U.S. 595 (1979).

an ex-chaplain sued a Catholic university for gender discrimination. 462 F.3d 294, 308 (3d Cir. 2006). According to the plaintiff, the university waived its church autonomy defense by failing to raise it in an administrative proceeding before the Equal Employment Opportunity Commission. *Ibid.* The Third Circuit rejected the waiver argument, however, concluding that the university had no obligation to raise church autonomy in an administrative proceeding because administrative agencies generally are not competent to resolve constitutional issues. *Id.* at 308-09.

By contrast, in *Hutchinson* v. *Luddy*, 763 A.2d 826 (Pa. Super. 2000), which involved a claim of negligent supervision against a diocese, the state appellate court held that the diocese waived its church autonomy defense by failing to raise it adequately in the trial court. According to the court, raising church autonomy in a footnote in the trial court and asserting it "in the context of discovery of archived documents" was insufficient to preserve the argument as a defense on appeal. *Id.* at 833-34.

Other courts, however, have held that church autonomy is a jurisdictional issue that can never be waived, even if a church fails to raise it altogether. See, *e.g.*, *EEOC* v. *Catholic Univ. of Am.*, 856 F. Supp. 1 (D.D.C. 1994), aff'd 83 F.3d 445 (D.C. Cir. 1996) (raising church autonomy *sua sponte* after trial and dismissing gender discrimination claims by professor of canon law against a Catholic university). As the Seventh Circuit concluded, "[T]he ministerial exception, like the rest of the internal-affairs doctrine, is not subject to waiver or estoppel." *Tomic* v. *Catho-*

lic Diocese of Peoria, 442 F.3d 1036, 1042 (7th Cir. 2006) (Posner, J.).

B. The question of waiver also frequently arises in employment disputes, where litigants argue that a church has waived its autonomy rights either by bargaining those rights away contractually, or by pledging to refrain from unlawful employment discrimination. In *Minker* v. *Baltimore Annual Conference of United Methodist Church*, for example, the D.C. Circuit noted that "[a] church is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court." 894 F.2d 1354, 1359 (D.C. Cir. 1990). But when resolving an employment dispute between a minister and church, it can be difficult to determine whether a church has, in fact, bargained away its autonomy rights in a purely secular contract.

Minker involved two contract claims. One claim was based on the church's "Book of Discipline," which promised that clergy appointments would be made "without regard to race, ethnic origin, sex, color, or age." *Id.* at 1358. According to the plaintiff, because the church contractually disavowed any right to practice age discrimination, it could not assert a church autonomy defense against a claim of age discrimination. The court, however, rejected this argument, concluding that it would require the court "to consider the religious purpose of the antidiscrimination provision [in the Book of Discipline] and to define its limits for the church." *Id.* at 1359.

By contrast, the court allowed the minister's oral contract claim to go forward, concluding that a church autonomy defense was unavailable if the

church had breached a purely secular promise to assign the minister to a more suitable congregation. *Id.* at 1360-61. See also *Welter* v. *Seton Hall Univ.*, 128 N.J. 279, 297-300 (1992) (rejecting church autonomy defense to breach of contract claim because the Catholic university had entered a secular employment contract that "did not incorporate an implied covenant to abide by Roman Catholic Canon Law").

Plaintiffs also routinely claim that a church has waived its autonomy defense by holding itself out as an "equal opportunity employer." According to these plaintiffs, by promising to abide by federal employment discrimination laws, a church waives its right to invoke the church autonomy defense in employment discrimination cases. See *Petruska*, 462 F.3d at 308; *Minker*, 894 F.2d at 1357; *Tomic*, 442 F.3d at 1041-42. Other plaintiffs have argued that, by seeking accreditation from an organization that forbids employment discrimination, church-affiliated organizations waive their right to invoke the ministerial exception. *Hollins* v. *Methodist Healthcare, Inc.*, 474 F.3d 223, 226 (6th Cir. 2007).

Although most courts have rejected these arguments, they have done so on the ground that a waiver of church autonomy rights must be established by "clear and compelling" evidence and must be "knowingly" and "voluntarily" made—a standard at odds with the inadvertent waiver rule adopted by the Connecticut Supreme Court. *Ibid.*; *Petruska*, 462 F.3d at 309.

C. Finally, some plaintiffs have asserted that a church waives its autonomy rights by accepting state or federal funds. The Third Circuit rejected this ar-

gument in *Petruska*, concluding that accepting government funds did not constitute "an intentional relinquishment or abandonment" of the ministerial exception. 462 F.3d at 308-09.

In *Dodge* v. *Salvation Army*, however, the court found the receipt of federal funds problematic. There, a former employee sued the Salvation Army for religious discrimination under Title VII; the Salvation Army argued that the firing was protected under Title VII's "religious exemption," which (much like the ministerial exception) protects the right of religious organizations to hire and fire on the basis of religion. 1989 WL 53857 at *2 (S.D. Miss. 1989); 42 U.S.C. § 2000e-1. The district court, however, rejected the Salvation Army's argument, concluding that applying the religious exemption would unconstitutionally advance religion because "the plaintiff's position * * * was funded substantially, if not entirely, by federal, state and local government [funds]." *Id.* at *4.

Under the same reasoning, applying the church autonomy doctrine to a religious organization that receives government funds would also unconstitutionally advance religion. A religious organization would thus waive its church autonomy rights by receiving government funds.

* * * * *

Although this case comes to the Court in a specific factual context—including tragic allegations of clergy sexual abuse, protective orders sealing internal church documents, and third-party attempts to access those documents—it presents a question that routinely plagues church autonomy cases. That question can arise any time church autonomy is at issue;

the cases cited above are merely a representative sample. Most discovery disputes over the confidentiality of church documents never make their way into a reported case. Based on considerations of frequency alone, then, this case presents a question of exceptional importance.

II. The Connecticut Supreme Court's inadvertent waiver rule has sweeping, detrimental consequences.

The question of waiver is significant not only for its frequency, but also for its serious practical consequences. Connecticut's resolution of the waiver issue—allowing churches to waive their constitutional rights *inadvertently*—undermines religious liberty, threatens to entangle church and state, and provokes needless church–state litigation.

A. The inadvertent waiver rule undermines religious liberty.

First and foremost, the right of church autonomy promotes religious liberty by protecting churches from state interference with their internal affairs. Churches have the right "to decide for themselves, free from state interference," a wide variety of internal matters. *Kedroff*, 344 U.S. at 116. These matters include, among other things, (1) church government, structure, and discipline, (2) selection of church leaders, and (3) development of church doctrine. *Ibid.*; *Watson* v. *Jones*, 80 U.S. 679, 727 (1871). Churches also have the right to *deliberate* about these matters without state interference. *Ibid.*

An inadvertent waiver rule poses several threats to church control over internal affairs—not only in

this case, but in church autonomy cases more generally.

1. In this case, the *New York Times* is attempting to use state power to pry confidential internal documents away from the Diocese of Bridgeport. At stake is the church's right to shield its internal deliberations from public view. According to the Connecticut Supreme Court, the church forfeited this right—not because the public interest in judicial documents outweighs that right, but simply because the church inadvertently waived it. App.66a-69a. The inadvertent waiver rule thus greatly increases the risk that the church's internal deliberations will be made public.

Public exposure of internal deliberations causes two harms. The first is an immediate invasion of privacy: By court order, the church is forced to turn over physical and mental health evaluations of priests and reveal its internal evaluations of fitness for ministry. The state could never force churches to reveal this information to the general public, say, as a condition of receiving tax-exempt status; in many circumstances, the state cannot even force churches to reveal information *to their own members*. See, *e.g.*, *Gipson* v. *Brown*, 295 Ark. 371, 377 (1988) (forcing church to disclose financial information to its members under the state nonprofit corporation law would violate church autonomy). But by invoking a rule of involuntary waiver, Connecticut achieves an otherwise unconstitutional result.[4]

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[4] Respondents may argue that the state should be allowed to force churches to reveal their internal church deliberations whenever it has a compelling interest in doing so—such as

Second, an increased risk of public exposure changes how churches deliberate (and thus what decisions churches ultimately reach). As this Court observed in the context of Executive branch deliberations, the threat of public exposure inevitably alters the deliberative process:

> Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests *to the detriment of the decisionmaking process*.

United States v. *Nixon*, 418 U.S. 683, 705 (1974) (emphasis added).

This axiom proves true in a variety of contexts. For example, a vast body of secondary literature has shown that "open-meeting laws"—which expose legislative or agency deliberations to the public—can have a significant adverse effect on the quality of deliberations and decisions.[5] For the same reason, this Court

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when investigating and punishing the sexual abuse of minors. But the Connecticut Supreme Court relied on no such balancing of interests. App.66a-69a. Rather, under an inadvertent waiver rule, it makes no difference whether the underlying lawsuit involves sexual abuse of minors or a slip-and-fall on the church steps—once the church begins producing internal documents (even if it does so under seal), it loses any right to keep its internal deliberations private. Rejecting an inadvertent waiver rule, by contrast, would not immunize churches from criminal and civil liability; it would simply ensure that the church's interests are considered in the balance with the state's.

[5] See, *e.g.*, John F. O'Connor & Michael J. Baratz, *Some Assembly Required: The Application of State Open Meeting Laws to Email Correspondence*, 12 Geo. Mason L. Rev. 719, 766 (2004) (collecting sources); Ellen E. Meade & David Stasavage, *Publicity of Debate and the Incentive to Dissent: Evidence from the US*

has recognized a "deliberative process privilege"—which protects internal government deliberations from discovery—for "the obvious [reason] that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news." *Dept. of Interior* v. *Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8-9 (2001).

Moreover, many of the Framers believed that, without the secrecy of the 1787 Constitutional Convention, "no constitution of the kind that was developed could have been written." *Nixon*, 418 U.S. at 705 n.15 (citing C. Warren, *The Making of the Constitution* 134-39 (1937)). And, in debates over whether this Court's oral arguments should be videotaped, prominent opponents of videotaping have argued that videotaping would adversely affect the deliberative process. See *Judicial Security and Independence: Hearing Before the S. Comm. on the Judiciary*, 110th Cong. 73-80 (2007) (statement of Justice Kennedy to Senator Spector) ("A majority of my court feels very strongly * * * that televising our proceedings would change our collegial dynamic.").

The threat of inadvertent public exposure affects the deliberations of churches no less. Consider just one of many important decisions: the selection and

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Federal Reserve, 118 Econ. J. 695 (2008) (finding that the Federal Reserve's decision to publish transcripts of its meetings resulted in a statistically significant reduction in dissent and debate); Thomas H. Tucker, *"Sunshine"—The Dubious New God*, 32 Admin. L. Rev. 537, 546 (1980) ("[There is] unanimous agreement among all branches of the federal government that publicity inhibits candor and the free exchange of ideas and that these qualities are important to the effective functioning of the government.").

evaluation of ministers. If sensitive, internal church deliberations can be made public without a knowing and voluntary waiver of rights, churches will have every incentive to conduct sensitive deliberations in oral rather than written form. The threat of exposure can even create a *disincentive* to uncovering and discussing problematic issues, at least where those issues are not immediately relevant to the decision at hand. An inadvertent waiver rule thus undermines the church's search for truth.

The threat of exposure can also change the decisions a church ultimately reaches. As the Diocese has pointed out, the "tri-fold belief in remorse, redemption, and rehabilitation"—the belief that people can change—plays a key role in "whether to restore someone to ministry who has been accused of improper conduct." Pet.11. The threat that the church's deliberations will be publicly exposed and second-guessed exerts a not-so-subtle pressure on the church to give less weight to this belief.

Finally, the threat of exposure alters the incentives of prospective ministers. Some perfectly fit candidates may avoid a process that threatens to air their private physical and mental health records to the public (thus reducing the supply of willing ministers). Other candidates may hide their past problems from the church—either fearing that the church will reject them because it can no longer give full weight to "remorse, redemption, and rehabilitation," or fearing that their personal history will land in the *New York Times*. Such incentives actually *impede* churches' efforts to protect the children in their care, making it significantly more difficult to identify potentially problematic ministers.

In short, when churches control the privacy of their internal deliberations, they are free to engage in a robust, uninhibited search for truth. But by robbing churches of control over their privacy, an inadvertent waiver rule significantly—and unconstitutionally—alters churches' decisions.[6]

2. Nor are the problems of an inadvertent waiver standard limited to the facts of this case. As explained in Part I above, questions of waiver arise in numerous contexts. Litigants confronted with a church autonomy defense routinely argue that a church has inadvertently waived that defense—whether by failing to raise it properly, *Hutchinson*, 763 A.2d at 833-34, abandoning it contractually,

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[6] Some may argue that, in light of past abuses, governments have a compelling interest in regulating the way churches deliberate. But while governments certainly have a compelling interest in preventing and punishing crimes such as sexual abuse, the First Amendment restricts the *means* by which governments can pursue that interest. See *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 546-47 (1993) (applying least restrictive means test). For example, although the state can punish ministers who engage in sexual abuse (or churches that facilitate it), the state can't dictate how churches choose their ministers. Forcing churches to make their internal deliberations public has the same effect: it changes the way churches deliberate, and it changes the decisions they reach.

Thus, even assuming churches want to change the way they deliberate—and many do—the government lacks constitutional authority to impose such a change. As a prominent commentator has observed, "Even if government policy and church doctrine endorse the same broad goal, the church has a legitimate claim to autonomy in the elaboration and pursuit of that goal." Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1373, 1399 (1981).

Minker, 894 F.2d at 1358-59, claiming to be an equal opportunity employer, *Tomic*, 442 F.3d at 1041-42, or receiving government funds, *Petruska*, 462 F.3d at 308. In any of these contexts, an inadvertent waiver rule can seriously undermine religious liberty.

To take just one example, if the Third Circuit had accepted the plaintiff's inadvertent waiver argument in *Petruska*, the court would have been forced to decide whether a Catholic university's decision to restructure was a genuine religious decision "about who would perform spiritual functions and about how those functions would be divided," or was merely a "pretext for gender discrimination." 462 F.3d at 307. The harm to religious liberty of an erroneous decision is enormous: punishing a Catholic university for its religion-based choice of chaplain. The same could be said in any number of inadvertent waiver scenarios.[7]

B. The inadvertent waiver rule threatens to entangle church and state.

For similar reasons, Connecticut's inadvertent waiver rule also threatens to entangle the state in answering religious questions. Such entanglement is problematic both because secular courts lack competence to resolve religious questions, *Minker*, 894 F.2d

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[7] See, *e.g.*, *Hutchinson*, 763 A.2d at 833-34 (inadvertent waiver authorized court to punish Catholic diocese for retaining a priest); *Tomic*, 442 F.3d at 1041-42 (inadvertent waiver argument would authorize court to punish Catholic diocese for choice of music director and organist); *Minker*, 894 F.2d at 1356 (inadvertent waiver argument would authorize court to punish the United Methodist Church for failing to assign pastor to a congregation more suited to his training and skills).

at 1356-57, and because resolving such questions may violate the Establishment Clause, *Bryce* v. *Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 655 (10th Cir. 2002).

In this case, the underlying lawsuits against the Diocese raised serious issues of entanglement. Those lawsuits sought to hold the Diocese liable in tort for its choice of ministers, forcing the court to determine whether the church's weighing of purely religious factors constituted negligence. The court could not resolve that issue without delving into religious questions.

Moreover, even assuming a court can now force the Diocese to make its internal documents public without resolving a religious question, applying the inadvertent waiver rule in other cases will undoubtedly create serious entanglement issues.

In employment cases like *Petruska*, for example, an inadvertent waiver rule would force courts to probe the internal motives of religious organizations, deciding whether employment decisions were motivated by doctrinal concerns or discriminatory animus. 462 F.3d at 307. In labor-relations disputes—such as whether a religious school is subject to collective bargaining obligations under the National Labor Relations Act—an inadvertent waiver rule would subject religious schools to "intrusive inquiries into [their] religious beliefs," and state interference with their employment practices. *Univ. of Great Falls* v. *NLRB*, 278 F.3d 1335, 1341-42 (D.C. Cir. 2002). And in tort suits—such as breach of fiduciary duty claims based on misuse of church funds—an inadvertent waiver rule could plunge courts into doctrinal dis-

putes over "the proper role of * * * church officials" and whether certain expenditures were "proper in light of [the church's] religious doctrine and practice." *Harris* v. *Matthews*, 361 N.C. 265, 273 (2007).

It is therefore no surprise that, citing entanglement concerns, some courts have held that church autonomy rights can *never* be waived—let alone waived inadvertently. *Tomic*, 442 F.3d at 1042; *Hollins*, 474 F.3d at 227 (McKeague, J., concurring). Such rulings caution against an approach that, like Connecticut's rule here, would drag the state into religious disputes merely because a church inadvertently waived its constitutional rights.

C. The inadvertent waiver rule provokes needless church–state litigation.

Finally, an inadvertent waiver rule discourages settlement and provokes needless church–state litigation.

In this case, the Diocese produced sensitive documents and settled the underlying lawsuit based in part on assurances that those documents would be kept confidential. The inadvertent waiver rule, however, punishes this attempt to comply with discovery requests and settle out of court. As respondents argue, if the Diocese wanted to preserve its autonomy rights, it had to "violate the [lower court's discovery] order and risk the pain of contempt in order to obtain a right to appeal." Respondent's Opp. to App. to Extend Stay at 15. That, of course, is a Hobson's choice: the church can produce documents and settle, but only at the expense of its constitutional rights.

The inadvertent waiver rule not only discourages settlement but also encourages new litigation. Under

a "knowing and voluntary" waiver standard, it is clear that many lawsuits against churches will not succeed—*e.g.*, an ex-minister's Title VII suit will almost always be barred by the ministerial exception. But if a church can inadvertently waive its autonomy rights, otherwise meritless suits receive new life. Maybe the church has waived its rights by holding itself out as an equal opportunity employer; maybe the church will waive its rights by failing to raise them properly; maybe the church has received too much government funding. Plaintiffs will never know unless they file suit; the inadvertent waiver standard thus encourages unnecessary litigation over sensitive church-state issues.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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